



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 13 January 2012

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ADDENDUM TO THE "I/A" ITEM NOTE

from: General Secretariat of the Council

to: COREPER/COUNCIL

No. Cion prop.: 13840/10 EF 115 ECOFIN 539 CODEC 870

Proposal for a Regulation of the European Parliament and of the Council on Short Selling and certain aspects of Credit Default Swaps (**first reading**)

– Adoption of the legislative act (LA + S)

= Statements

COMMON GUIDELINES

Consultation deadline: 20.2.2012

Statement by the Commission

"The Commission remains committed to availing itself of all relevant expertise. The Commission regrets that the wording in recital 43 on consultations does not fully reflect the Common Understanding on delegations of legislative power under Article 290 of the TFEU".

Statement by the UK delegation

"At May ECOFIN the Council and Commission committed "to work during Trilogue to find a solution taking into account the concerns expressed by Member States in ECOFIN Council regarding the powers of ESMA in Article 28". Despite this commitment the concerns were not addressed. The UK continues to have significant concerns that as drafted, Article 28 would be unlawful and contravene the principle set out in the judgment of the Court of Justice of the European Union in the case of *Meroni*. The UK Government cannot therefore support the text in Article 28 and will be considering how best to ensure legal certainty is provided."
